



The State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

February 22, 2007

The Honorable Candace C.W. Bouchard, Chair  
Public Works and Highways Committee  
Room 201, Legislative Office Building  
Concord, NH 03301

**RE: HB 283 allocating a portion of unrefunded road tolls to the dam maintenance fund**

Dear Chairman Bouchard:

Thank you for the opportunity to comment on HB 283, which amends RSA 260:60 to provide that half of the unrefunded tax on gasoline used by boats be allocated to the state's Dam Maintenance Fund to fund the operation, maintenance, and reconstruction of the 273 dams owned by the State of New Hampshire. We welcome the Legislature's efforts to explore alternative methods to important Department of Environmental Services programs.

The bill implements a recommendation of the Study Committee that was formed, pursuant to Chapter 121:1, Laws of 2004, to study the effects of electric utility restructuring on the revenue to the state's Dam Maintenance Fund and the alternatives for funding the operation and maintenance of state-owned dams. A copy of the final report of the Study Committee is attached.

The State of New Hampshire owns a total of 273 dams, many of which impound the most important recreational lakes in the state including Winnepesaukee, Squam, Winnisquam, Newfound, Sunapee, and Ossipee. Of these, 33 are High Hazard Dams, the failure of which would cause loss of life downstream, and 51 are Significant Hazard Dams, the failure of which would cause significant property damage downstream. In total there are more than 4,000 homes, more than 130 state road crossings and more than 800 town road crossings that would be destroyed or damaged if these state-owned dams were to fail.

Even the loss of any of the Low Hazard Dams that the state owns, which do not have significant property at risk downstream, could cause significant economic losses to the state due to the loss of recreational opportunities and the devaluation of waterfront property associated with the dam. According to the New Hampshire Lake Association's *Report on the Economic Value of New Hampshire's Surface Waters*, New Hampshire's lakes provide up to \$1.8 billion annually of economic benefit to the state, and waterfront property owners pay nearly a quarter billion dollars annually in property taxes. Since the majority of New Hampshire's surface waters are impounded by state-owned dams, the upkeep of these dams is important, not only to protect public safety and the environment, but also to maintain the large economic benefits that they provide.

Many of these dams were constructed in the mid 1800's to provide waterpower to fuel the industrialization of New Hampshire and Massachusetts, and most of the dams that the state owns are well over 100 years old. Because of their age, they require continued attention to maintain them in a safe condition. Given the number of dams the state owns and the normal design life of these structures, the state must perform major repairs or reconstruction on an average of 5 to 6 dams per year. The large number of dams the state owns also puts a large operations burden on the state. The outlets of each of these dams must be constantly managed so as not to cause flooding in the lakes and downstream, and to ensure that the recreation and other public benefits provided by the lakes are maintained.

The costs for the operation, maintenance, repair and reconstruction of these dams are funded from the State Dam Maintenance Fund. The sole source of revenue to the fund is rent payments that DES receives from leasing eleven of the dams that it owns to private hydropower developers to generate electricity at the sites. Under the terms of the leases, the rent that is paid to DES is a percentage of the revenue from the sale of power at the facilities. Ten of these lessees sell the power to Public Service Company of New Hampshire (PSNH).

Four years ago, the Dam Maintenance Fund was projected to be solvent through 2015 based on projected revenues from these hydropower leases and projected expenditures on bond obligations and dam reconstruction projects. However, in 2002 PSNH initiated actions to renegotiate their above-market power purchase agreements pursuant to RSA 374-F. This is the Electric Utility Restructuring legislation that directs utilities to take all reasonable measures to mitigate stranded costs, including the renegotiation of power purchase contracts. As part of that initiative, PSNH bought-out or bought-down the above-market power purchase agreements of seven of the lessees of the state-owned dams in return for lump sum payments made to these lessees. The result was a 40% drop in revenue to the State Dam Maintenance Fund, which, combined with the continuing debt service obligations of the fund, has caused the fund to be insolvent.

Given this sudden, unexpected reduction in the funding source of the Dam Maintenance Fund, the Legislature reacted by enacting SB 488, Chapter 121:1, Laws of 2004 and forming a committee to study the effects of electric utility restructuring on the state's Dam Maintenance Fund and the alternatives for funding the operation and maintenance of state-owned dams. The Committee met through the summer and fall of 2004, and issued its final report on December 1, 2004.

The Committee identified potential alternative funding from those sources that benefit most directly from the impoundments created by state-owned dams, including shorefront property owners, boaters, anglers, and others that use the impoundment for recreation. Alternative funding sources examined, but determined by the Committee to be impractical, included leasing additional dams for hydropower generation and increasing fishing license fees, boat registration fees, boat mooring fees, and park fees. However, the Committee did recommend two practical funding solutions: the first one being a shorefront maintenance fee per linear foot of shorefront property, and the second one being allocation of a portion of the



unrefunded road tolls to the Dam Maintenance Fund. This bill implements the second of these two alternatives.

As described in the Committee's final report, owners of motor vehicles pay a tax on the fuel they purchase which funds highway maintenance. Boaters also pay the tax because they buy the same fuel. Under RSA 260:47, boaters are given the opportunity to apply for a refund of this tax on fuel purchased for use in their boats. However, only a fraction of the boaters file for refunds, resulting in an unrefunded balance averaging approximately \$1.65 million per year over the past few years. Currently, this unrefunded balance is divided evenly between the Fish and Game Fund and the General Fund, in accordance with RSA 260:60. Under the proposed bill, RSA 260:60 will be amended to divide the unrefunded balance evenly between the Fish and Game Fund and the Dam Maintenance Fund.

A similar bill was introduced in the 2005 legislative session, along with a bill to implement the shorefront maintenance fee, but neither bill was passed. Instead, the Legislature assigned the Legislative Dam Management Review Committee (LDMRC), established by RSA 482:93, the task of studying the issue further (Chapter 306:9, Laws of 2006). In its final report dated December 1, 2006, a copy of which is attached, the LDMRC did not recommend any alternative funding source, but recommended that in 2007, the LDMRC quickly identify one that can be implemented by the Legislature in the 2007 session.

Given the delay in implementing an effective solution, it is fortunate that the state recently received a one-time payment for settlement of a claim against its lessees for a portion of the money that they received from PSNH for the buyouts of their power purchase agreements. This settlement will be sufficient to keep the fund solvent for another year, while the Legislature continues to work on a solution. However, if a solution is not developed soon, the revenue into the fund after that time will only be sufficient to repay the bonds issued to establish the Dam Maintenance Fund, and no funding will be available for dam operation, maintenance and repair. If the unrefunded gas toll alternative is not adopted, it is important that another source of funding be identified this session to ensure that the state's dams continue to be operated and maintained so that they do not pose a threat to life and property downstream and continue to provide economic and recreation benefits to the state.

Thank you for this opportunity to comment on this bill. Please call either me at 271-3503, or Jim Gallagher at 271-1961, if you have any questions or need additional information.

Very truly yours,

  
Thomas S. Burack  
Commissioner

Attachments

cc: Representative David H. Russell